STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the Matter of:	)	
	)	COMPLAINT NO. R2-2007-0034
City of Martinez	)	for
525 Henrietta Street	)	ADMINISTRATIVE
Martinez, Contra Costa County	)	CIVIL LIABILITY
	)	
	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Martinez (hereinafter, the City or Permittee) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter, Water Board) may impose civil liability pursuant to Section 13385 of the California Water Code.

2. Unless waived, the Water Board will hold a hearing on this matter on June 13, 2007, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. You or your representative(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Water Board. You will be mailed an agenda no less than ten days before the hearing date. You must submit any written evidence concerning this complaint to the Water Board no later than 30 days from the date of this Complaint. Any written evidence submitted to the Water Board after 30 days from the date of this Complaint will not be considered by the Water Board.

3. At the hearing the Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial liability or take other enforcement actions.

ALLEGATIONS

4. The following facts are the basis for the alleged violation in this matter:

   a. The City is permitted under the Contra Costa Countywide Municipal Stormwater Permit (Permit), Order No. 99-058, NPDES Permit No. CAS0029912, as amended by Orders Nos. R2-2003-0022, R2-2004-0059, R2-2004-0061, and R2-2006-0050. Per Provision No. C.6 of the Permit, the City is required to submit an Annual Report by September 30 of each year.

b. Per Provision No. C.6 of the Permit, the City is required to submit an Annual Report by September 30 of each year. The full text of Provision No. C.6 reads as follows:

> Annual Reports: The Dischargers shall submit an Annual Report, by September 30, of each year, documenting the status of the Program's and the Dischargers' activities during the previous fiscal year, including the results of a qualitative field level assessment of activities implemented by the Dischargers, and the performance of tasks contained in the Plan. The Annual Report shall include a compilation of deliverables and milestones completed as described in the Plan. In each Annual Report, the Dischargers may propose pertinent updates, improvements, or revisions to the Plan, which the Regional Board shall act upon in accordance with Provision C.12. As part of the Annual Report preparation process, each of the Dischargers shall conduct an overall evaluation of the effectiveness of its applicable activities described in the Plan. Direct and indirect measures of effectiveness may include, but are not limited to; conformance with established Performance Standards, quantitative monitoring to assess the effectiveness of BMPs, measurements of estimates of pollutant load reductions, detailed accounting of Program accomplishments, funds expended, and staff hours utilized. Methods to improve effectiveness in the implementation of tasks and activities, including development of new, or modification of existing Performance Standards and/or development of new performance standards shall be identified where appropriate.

c. The cities covered by the Permit, including the City typically submit their Annual Reports together as one compiled submittal from the Contra Costa Clean Water Program, on September 30 of each year. The submittals from the Contra Costa Clean Water Program during 2004/05 and 2005/06 did not contain a report for the City.

d. On March 17, 2006, the Permittee was issued a Notice of Violation (NOV) by the Executive Officer that it was in violation of the Permit for failure to submit the 2004/05 annual report.

e. On March 31, 2006, the Permittee responded to the March 17 notice and suggested three possible scenarios that could be utilized to correct the violation and complete an Annual Report. The Water Board did not respond to the request for feedback at that time; however, none of the three suggested measures were completed, and the annual report was not received.

f. The report for 2005/06 was received by the Water Board on October 16, 2006, two weeks after the report due date of September 30, 2006.

g. On January 25, 2007, the Executive Officer issued a second NOV to the Permittee. The Permittee was notified of its obligation to submit an annual report for 2004/05 and

to comply with the Permit. This letter informed the Permittee that it was in violation of the Permit and that the Executive Officer would recommend an enforcement action.

h. The Permittee submitted its 2004/2005 annual report on February 14, 2007. The Permittee was in violation of the Permit for a total of 501 days (September 30, 2005, through February 14, 2007) for late submittal of its 2004/2005 annual report.

PROPOSED CIVIL LIABILITY

5. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.

6. Under California Water Code (CWC) Section 13385(c)(1), the Water Board can impose a maximum civil liability of $10,000 per day of violation. This Complaint addresses violations for the 501-day period from September 30, 2005, through February 14, 2007.

7. Under Section 13385(e) of the California Water Code, the Water Board shall consider the following factors in determining the amount of civil liability to be imposed:

   a. The nature, circumstances, extent, and gravity of the violation;
   The annual reports are a key means of determining the compliance status of the Permittee and ensuring the Permittee is implementing appropriate control measures within its jurisdiction.

   The Permittee was sent two NOV letters for non-submittal of annual reports. After the second NOV on January 25, 2007, the Permittee finally submitted its 2004/2005 annual report on February 14, 2007. The Permittee was out of compliance with the reporting requirements of the Permit for 501 days.

   Based on failure to submit an annual report for 501 days, the initial liability assessment is $21,500. The maximum amount of $10,000 per day was not used because of the nature and gravity of violation, which consists of failure to submit an annual compliance report to certify that the Permittee is in compliance with the Permit and to demonstrate that an annual compliance review was conducted by the Permittee.

   b. Whether the Discharge is susceptible to clean up or abatement;
   This factor only applies to discharges. It is not applicable to this complaint.

   c. The degree and toxicity of the discharge;
   This factor only applies to discharges. It is not applicable to this complaint.

   d. Permittee's ability to pay;
   The Permittee has not demonstrated an inability to pay the proposed amount.

e. Any voluntary cleanup efforts undertaken;
This factor only applies to discharges. It is not applicable to this complaint.

f. Prior history of violations;
The Permittee has submitted its annual reports from previous years in a timely manner.

g. Degree of culpability; The Permittee is fully culpable for violating the terms and conditions of the Permit. All other permittees in the Contra Costa Clean Water Program submitted their reports on time.

The Permittee did not notify Water Board staff of its failure to submit an annual report in a timely manner. The Permittee's first response was after the first NOV was sent March 17, 2006.

h. Savings resulting from the violation; and
The Permittee eventually submitted the annual report albeit 501 days late. The cost saving is insignificant.

i. Other matters that justice may require.
Staff time to prepare a Complaint and supporting information is estimated to be 15 hours. Based on an average cost to the State of $100 per hour, the total cost is $1,500.

8. Based on the above factors, the Executive Officer of the Water Board proposes that an administrative civil liability be imposed on the Permittee in the amount of $23,000 for the violation cited above, which includes $1,500 for the recovery of staff costs.

9. The Permittee can waive its right to a hearing to contest the allegations contained in this Complaint by (a) paying the civil liability in the full amount or (b) undertaking an approved supplemental environmental project in an amount not to exceed $20,000 and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the attached waiver.

May 4, 2007
Date

acting for Bruce H. Wolfe
Executive Officer

WAIVER

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. Your waiver is due no later than June 5, 2007, 5 p.m.

☐ Waiver of the right to a hearing and agreement to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2007-0034 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the Water Board meeting for which this matter is placed on the agenda. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.

☐ Waiver of right to a hearing and agree to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. R2-2007-0034, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to $20,000 and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the Water Board meeting for which this matter is placed on the agenda. The SEP proposal shall be submitted no later than June 5, 2007, 5 p.m. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

Name (print)	Signature
Date	Title/Organization

Subject: SUPPLEMENTAL ENVIRONMENTAL PROJECTS AS COMPONENTS OF ADMINISTRATIVE CIVIL LIABILITIES

The San Francisco Bay Regional Water Quality Control Board (Regional Water Board) accepts and encourages Supplemental Environmental Projects (SEP's) in lieu of a portion of any Administrative Civil Liability (ACL) or Mandatory Minimum Penalty (MMP) imposed on dischargers in the Bay Area. This letter is to inform you of the types of projects the Regional Water Board will accept and the procedures for proposing and implementing a project.

The overall goals of the Regional Water Board's program for SEP's are: 1) monetary penalties should be directed to projects within the Region, especially in the watershed where the discharge occurred; 2) projects should benefit the environment; 3) projects should focus on education, outreach and/or restoration. The Regional Water Board identifies four categories of SEP's that may receive funding: pollution prevention, pollution reduction, environmental restoration, and environmental education. The project should not be used to mitigate the damage caused directly by the original violation or to implement measures required to comply with permits or regulations, since this is the responsibility of the discharger regardless of any penalties involved.

The Regional Water Board does not select projects for SEP's; rather, it is the discharger's responsibility to propose the project (or projects) they would like to fund and then obtain approval from the Regional Water Board. However, the Regional Water Board can facilitate this process by maintaining a list of possible projects, which is made available to dischargers interested in pursuing the SEP option. Dischargers are not required to select a project from this list, however, and may contact local governments or public interest groups for potential projects in their area, or develop projects of their own.

In cases where an SEP is approved by the Regional Water Board, payment of a portion of the ACL or MMP will be suspended if the project is satisfactorily completed on schedule. The SEP can only be used to offset a portion of a proposed penalty; therefore the final ACL package will consist of a monetary penalty, reimbursement of staff costs, and a project. Note that the total penalty is not reduced by implementing a project; rather the method of payment is being modified in order to achieve a greater environmental benefit.

The State Water Resources Control Board's Enforcement Policy requires third party oversight of SEPs. The Regional Water Board has contracted with the San Francisco Estuary Project (SFEP) to provide this oversight. SFEP serves as liaison between the discharger, the Regional Water Board and the fund recipient and will monitor project implementation and expenses. SFEP staff will also maintain a current list of potential projects and can assist in the selection process. This coordination work is funded by allocation of 6% of any SEP over $20,000 to SFEP.

Questions regarding the Regional Water Board's SEP program may be directed to Carol Thornton at the San Francisco Estuary Project at (510) 622-2419.

California Regional Water Quality Control Board
San Francisco Bay Region

Linda S. Adams
Secretary for Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
http://www.waterboards.ca.gov/sanfranciscobay

Arnold Schwarzenegger
Governor

May 2007

NOTICE OF PUBLIC HEARING
TO CONSIDER ADMINISTRATIVE CIVIL LIABILITY
FOR
CITY OF MARTINEZ
CONTRA COSTA COUNTY

The San Francisco Bay Regional Water Quality Control Board (Water Board) Executive Officer has issued an administrative civil liability complaint (Complaint) proposing a civil liability of $23,000 against City of Martinez (Discharger) for failure to submit an Annual Report for 2004/05 and 2005/06 in a timely manner. This was in violation of Water Board Order No. R2-1999-0058. The Water Board will hold a hearing on the Complaint as follows:

Date and Time: June 13, 2007, 9:00 a.m.
Place: Auditorium, 1515 Clay St., Oakland

No hearing will be held if the Discharger waives its right to a hearing and agrees to pay the proposed civil liability as set forth in the Complaint, provided no significant public comments are received during the public comment period. At the hearing, the Water Board may affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General for judicial enforcement.

Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq. Except as provided in these regulations, Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Water Board.

Any persons objecting to the hearing procedures set forth herein must do so in writing by June 5, 2007, to the contact listed below.

Hearing Participation

Other than prosecutorial staff, participants at the hearing are either designated as "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses. Designated parties are subject to cross-examination. Interested persons may present non-evidentiary policy statements, and are not subject to cross-examination. Interested persons may not cross-examine parties, but may be asked to respond to clarifying questions.

The following participants are hereby designated as parties at the hearing:

City of Martinez

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: prosecutorial staff and Discharger shall each have **20 minutes** to testify, present evidence, and cross-examine witnesses, and each interested person shall have **3 minutes** to present a non-evidentiary policy statement.

Staff Counsel Dorothy Dickey is advising the prosecutorial staff. Staff Counsel Yuri Won will advise the Board.

Written Comment and Evidence Deadline

The deadline to submit any and all written comments and evidence to be offered at the hearing is **5 p.m. on June 5, 2007**. Persons shall submit comments to Matt Graul at 1515 Clay Street, Suite 1400, Oakland, CA 94612.

Questions

Questions concerning this matter may be addressed to prosecutorial staff Matt Graul at 510-622-2381 or mgraul@waterboards.ca.gov.

Evidentiary Documents and File

The Complaint and related documents are on file, and may be inspected or copied at the Water Board's offices during weekdays between 8:00 a.m. and 5:00 p.m. The Complaint is also available on the Board's website at www.waterboards.ca.gov/sanfranciscobay.

May 4, 2007
DATED

Shin Roei-Lee, Chief
South Bay Watershed Division